Supreme Court, U.S.
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In The
Supreme Court of the United States

JOSEPH LAKE,

Petitioner,

v.

LANGDON D. NEAL; RICHARD A. COWEN; MARISEL A. HERNANDEZ; LANCE GOUGH; CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

NICHOLAS C. KEFALOS, P.C.
Counsel of Record
ADOLFO MONDRAGÓN
VERNOR MORAN, LLC
27 N. WACKER DRIVE, SUITE 2000
CHICAGO, IL 60606-2800
(312) 264-4460
nkefalos@vernormoran.com

Counsel for Petitioner

March 15, 2010

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

The district court dismissed a claim based on the National Voter Registration Act[1] ("NVRA")and the Driver's Privacy Protection Act[2] ("DPPA")that was brought against certain public officials and the public body they are members of to end a policy and practice of unlimited and unrestricted public disclosure of personal information from voter registration and motor vehicle records for failure to state a claim, subject to Fed. Civ. P. 12(b)(6). The district court also dismissed the action brought against the individual members of the public body, in their official capacities, based on Title VII case law, notwithstanding the fact that the lawsuit's claim was premised on the NVRA and the DPPA. The Seventh Circuit affirmed, but only on the ground that a State motor vehicle driver's application and a voter registration application made simultaneously, on the same sheet of paper, and in person at a department of motor vehicle pursuant to the NVRA does not pertain to a motor vehicle record under the DPPA and, as such, there is no prohibition against a policy, practice and custom of publicly disclosing social security numbers, names, former names, dates of birth, sex, addresses, and telephone numbers, without the consent of individuals to whom the information pertains, under the DPPA. The questions presented are:

1. Whether the NVRA's plain language clearly and

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[1] The National Voter Registration Act is found at 42 U.S.C. 1973-gg-1973-gg-10.

[2] The Driver's Privacy Protection Act is found at 18 U.S.C. 2721-2725.

unambiguously mandates that a State motor vehicle driver's license application and a voter registration application made simultaneously, on the same sheet of paper, and in person at a department of motor vehicle serve as one and the same.

2. Whether a person whose personal information that is knowingly disclosed to the general public as part of a custom, policy and practice of a public body can bring suit under the DPPA against the individual members of that public body in their official capacities when that public body is also a named party.

PARTIES TO THE PROCEEDING

Petitioner in this Court, Plaintiff-Appellant below, is Joseph Lake, an individual.

Respondents in this Court, Defendants-Appellees below, are Langdon Neal, in his official capacity as Chairman, Richard Cowen, in his official capacity as Secretary, Marisel A. Hernandez, in her official capacity as Commissioner, Lance Gough, in his official capacity as Executive Director, and the Chicago Board of Election Commissioners, the public body that the individuals herein named are members and director, respectively.

CORPORATE DISCLOSURE STATEMENT

No corporations are parties and there are no parent companies or publicly held companies owning any corporation's stock.

TABLE OF CONTENTS

Questions Presented i

Parties to the Proceeding iii

Corporate Disclosure Statement iii

Table of Contents iv

Table of Authorities vi

Opinions Below 1

Jurisdiction 1

Statutory Provisions Involved 1

Statement of the Case 2

Reasons for Granting the Petition 5

I. The Seventh Circuit's Application of the "Plain Meaning" Standard Conflicts with the Decisions of this Court. 6

A. Congress Clearly Intended Voter Registration for Federal Elections Filled-Out Simultaneously and On the Same Sheet of Paper with aMotor Vehicle Driver's License Applications to Serve as One and the Same. 8

B. The Question Presented has a Profound Implication for Privacy Rights and Personal Security. 11

II. The District Court's Conclusion that Actions against Public Officials are Redundant under the DPPA Disregards the Decision of this Court in *Kentucky v. Graham*, 473 U.S. 159 (1985). 13

Conclusion 14

Appendix

Appendix A: U.S. Court of Appeals for the Seventh Circuit Opinion, dated 11/6/09 . . . . . 1a

Appendix B: U.S. District Court for the Northern District of Illinois Eastern Division Memorandum Opinion and Order, dated 9/29/08 . . . . . 7a

Appendix C: U.S. District Court for the Northern District of Illinois Eastern Division Judgment, dated 9/29/08 . . . . . 14a

Appendix D: U.S. Court of Appeals for the Seventh Circuit Order Denying Rehearing and Rehearing En Banc, dated 12/15/09 . . . . . 16a

Appendix E: Statutory Provisions Involved . 18a

TABLE OF AUTHORITIES

CASES

Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,
530 U.S. 1 (2000) 6

John Doe # 1, et al., v. Sam Reed, Washington Secretary of State, et al., petition for cert. granted (U.S. Jan 15, 2010) (No. 09-559) 12

Kentucky v. Graham,
473 U.S. 159 (1985) 13

Lamie v. United States Trustee,
540 U.S. 526 (2004) 6

Margan v. Niles,
250 F. Supp. 2d 63 (N.D.N.Y. 2003) 11, 12

Microsoft Corp. v. AT&T Corp.,
550 U.S. 437 (2007) 8

Pub. Citizen v. U.S. Dep't. of Justice,
491 U.S. 440 (1989) 6

Reno v. Koray,
515 U.S. 50 (1995) 8

Robinson v. Shell Oil Co.,
519 U.S. 337 (1997) 8

Sierra Club v. Train,
557 F.2d 485 (5th Cir. 1977) 9

United States v. Locke,
471 U.S. 84 (1985) 7

United States v. Miscellaneous Firearms, Explosives, Destructive Devices and Ammunition,
376 F.3d 709 (7th Cir. 2004) 7

Welsh v. Boy Scouts of Am.,
993 F.2d 1267 (7th Cir. 1993) 8

STATUTES

18 U.S.C. §§ 2721-2721(a)(1) 1
18 U.S.C. §§ 2721-2725 ..... i, 2
18 U.S.C. § 2721(b) 3
18 U.S.C. §§ 2721(b)(1)-(b)(14) 3
18 U.S.C. § 2721(c) 3
18 U.S.C. § 2724(a) 2
18 U.S.C. §§ 2725(1)-2725(3) 2
28 U.S.C. 1254(1) 1
42 U.S.C. § 1973-gg-1973-gg-10 ..... i, 2
42 U.S.C. § 1973gg-1973gg-2(a)(1) 1
42 U.S.C. § 1973gg-2(a)(1) 2, 8
42 U.S.C. § 1973gg-3-1973gg-3(a)(1) 1
42 U.S.C. § 1973gg-3(a)(1) 3, 7, 9
42 U.S.C. § 1973gg-3(c)(1)-1973gg-3(c)(2)(A) 1
42 U.S.C. § 1973gg-3(c)(1) 10
42 U.S.C. § 1973gg-3(c)(2) 10
42 U.S.C. § 1973gg-3(c)(2)(A) 10
42 U.S.C. § 1973gg-3(d) 1
42 U.S.C. § 1973gg-3(d)(1) 3
42 U.S.C. § 1973gg(b)(1)-1973gg(b)(2) 1

RULES

Fed. R. Civ. P. 12(b)(6) ..... i, 5

OTHER

C. SANDS, SUTHERLAND'S STATUTORY CONSTRUCTION § 25.04 (4th ed. 1973) 9

THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2006) 8, 9, 10

Joseph Lake respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The decision of the court of appeals is reported at 585 F. 3d 1059 and is reproduced in the Appendix A herein at 1a. The order of the court of appeals denying rehearing and rehearing en banc is not reported and is reproduced in the Appendix D at 16a. The decision of the U.S. District Court for the Northern District of Illinois is not officially reported but is available at 2008 U.S. Dist. LEXIS 75090 and is reproduced in the Appendix B at 7a.

JURISDICTION

The judgment of the court of appeals was issued on November 6, 2009. Pet. App. A at 1a. Petitioner's timely petition for rehearing and rehearing en banc was denied on December 15, 2009. Pet. App. D at 16a. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The following are appended: National Voter Registration Act of 1993 at 42 U.S.C. 1973gg(b)(1)-1973gg(b)(2)(Pet. App. E at 18a.); 42 U.S.C. 1973gg-1973gg-2(a)(1)(Pet. App. E at 18a-19a.); 42 U.S.C. 1973gg-3-1973gg-3(a)(1)(Pet. App. E at 19a.); 42 U.S.C. 1973gg-3(c)(1)-1973gg-3(c)(2)(A)(Pet. App. E at 19a-20a.); 42 U.S.C. 1973gg-3(d)(Pet. App. E at 20a.); and, Driver's Privacy Protection Act of 1994 at 18 U.S.C. 2721-2721(a)(1)(Pet. App. E at 20a-21a.); 18 U.S.C.

2725(1)-2725(3)(Pet. App. E at 21a-22a.); and, 18 U.S.C. 2724(a)(Pet. App. E at 22a.).

STATEMENT OF THE CASE

On June 12, 2008, Petitioner filed a second amended complaint under the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §§ 2721-2725, seeking to end the Respondents' policy, practice, and custom of publicly disclosing motor vehicle information that identifies an individual and which is received directly from the Illinois Secretary of State pursuant to the mandates of the National Voter Registration Act ("NVRA"), 42 U.S.C. 1973gg-1973gg-10, without the consent of the individual to whom the information pertains and for a purpose not permitted under the DPPA. Through this policy, practice, and custom, Petitioner alleged that Respondents disclosed personal information from Petitioner's motor vehicle record without Petitioner's consent and for a purpose not permitted under the DPPA. Petitioner claimed in his complaint that Respondents' systemic public disclosure of motor vehicle information is unlawful and threatens the public safety and financial welfare of numerous registered voters, including Petitioner.

The amended complaint relies upon the NVRA, which requires that the Illinois Secretary of State establish procedures to register to vote in elections for Federal office by application made simultaneously with an application for a motor vehicle driver's license. 42 U.S.C. § 1973gg-2(a)(1). Indeed, the NVRA provides, "Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application

for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application." 42 U.S.C. § 1973gg-3(a)(1). Furthermore, the NVRA requires that the Illinois Secretary of State transmit a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority to Respondents within 10 days after the acceptance. 42 U.S.C. § 1973gg-3(d)(1). In this case, Petitioner alleged that Respondents receive the completed voter registration portions of the actual forms that individuals fill out by hand when applying for or renewing their motor vehicle driver's license in person at a department of motor vehicle directly from the Illinois Secretary of State pursuant to the mandates of the NVRA, including the completed voter registration portion of the application for a motor vehicle driver's license that Petitioner filled out in person at an Illinois State department of motor vehicle office on or about July 2, 1998.

The DPPA mandates that the Board, which is an authorized recipient of motor vehicle records pursuant to the NVRA, disclose personal information from motor vehicle records for a few limited purposes, 18 U.S.C. § 2721(b), and permits the Board to disclose personal information from motor vehicle records for various enumerated purposes, 18 U.S.C. §§ 2721(b)(1)-(b)(14), none of which are at issue here. Outside of those exceptions, the DPPA prohibits authorized recipients of motor vehicle records, such as Respondents, from reselling and re-disclosing personal information from motor vehicle records. 18 U.S.C. § 2721(c).

In this case, Petitioner alleged that the Respondents systemically discloses to the public un-

redacted facsimiles of the completed voter registration portions of the applications for a State motor vehicle driver's license accepted at a State motor vehicle authority, without the consent of the individual to whom the information pertains and for a purpose not permitted under the DPPA. Those un-redacted motor vehicle records contain social security numbers, names, former names, dates of birth, sex, addresses, and telephone numbers that can make it easy for stalkers, harassers, and would-be criminals to physically and, or, financially harm registered voters. In April of 2007, the Respondents disclosed an un-redacted facsimile of the completed voter registration portion of the actual form that Petitioner filled out by hand when he applied for his motor vehicle driver's license in person at a department of motor vehicles on or about July 2, 1998, without Petitioner's consent and for a purpose not permitted under the DPPA. This disclosure was part of a policy, practice, and custom and not a one-time fluke. Indeed, certain individuals had gained access to the un-redacted facsimiles of the voter registration forms that Respondents receive directly from the Illinois Secretary of State on many previous occasions over the course of at least ten years. The Respondents' policy, practice, and custom of publicly disclosing motor vehicle records that identify an individual, however, poses a legitimate threat to the personal safety and financial welfare of registered voters; In particular, to public figures and community activists such as Petitioner.

On September 29, 2008, the district court dismissed the action against the individual members of Respondent public body finding under Title VII case law that a lawsuit against the individual members of a public body when that public body is also named in

the lawsuit is redundant. (Pet. App. B at 10a.) Further, the district court held that Petitioner failed to state a claim against the named Respondent public body for which relief could be granted under Fed. R. Civ. P. 12(b)(6)because the district court found that information contained in a State motor vehicle record transformed into something other than a motor vehicle record because Petitioner chose to register to vote on the same application as his State motor vehicle license application and the information was then released by the State to Respondents. (Pet. App. B at 11a-12a.)

On November 6, 2009, the Seventh Circuit issued its opinion finding only that a State motor vehicle driver's application and a voter registration application made simultaneously, on the same sheet of paper, and in person at a department of motor vehicle pursuant to the NVRA does not pertain to a motor vehicle record under the DPPA.(Pet. App. A at 4a-5a.) On December 15, 2009, the Seventh Circuit denied Petitioner's timely request for rehearing and rehearing en banc. Pet. App. D at 17a.

REASONS FOR GRANTING THE PETITION

While this case involves dismissal for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), at the heart lies whether Respondents' policy, practice, and custom of disclosing to the public un-redacted facsimiles of the completed voter registration portions of the actual forms that individuals fill out by hand when applying for or renewing their motor vehicle driver's license in persons at a department of motor vehicle, which contain social security numbers, names, former names, dates of birth, sex, addresses, and telephone numbers, without the consent of the

individuals to whom the information pertains and for a purpose not permitted under the DPPA, as a matter of law, is protected from indiscriminant disclosure to the public at large under the DPPA. (Pet. App. A at 4a-5a.)

I. The Seventh Circuit's Application of the "Plain Meaning" Standard Conflicts with the Decisions of this Court.

"Congress says in a statute what it means and means in a statute what it says there." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). Hence, adherence to the plain meaning rule is not simply a matter of judicial craftsmanship. To the contrary, faithfulness to the words Congress has used in enacting a statute promotes respect for Congress as the principle source of positive law in a democratic society. *Lamie v. United States Trustee*, 540 U.S. 526, 536 (2004)("We should prefer the plain meaning since that approach respects the words of Congress."); *Pub. Citizen v. U.S. Dep't. of Justice*, 491 U.S. 440, 470-71 (1989)(Kennedy, J., concurring)(recognizing that departure from the plain meaning rule, except in limited circumstances where completely necessary, would intrude upon the lawmaking powers of Congress). Furthermore, allegiance to the plain meaning rule also disciplines courts to avoid making policy choices where the intent of Congress is expressed in the language of the statute. *Lamie*, 540 U.S. at 538 (stating that the "unwillingness to soften the import of Congress' chosen words ... results from 'deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a

bill.'")(quoting *United States v. Locke*, 471 U.S. 84, 95 (1985)(internal citations omitted)).

In this case, the plain language of the NVRA clearly and unambiguously indicates that the completed form that the State forwards to the Respondents is a part of a whole and uniform motor vehicle driver's application. The opinion of the court of appeals does not mention this. Instead, the Seventh Circuit does great violence to the NVRA and DPPA statutory framework by not reading language from the NVRA to inform its reading of the DPPA in this case.

Particularly, there is no mention in the Seventh Circuit's opinion concerning the language in Section 1973gg-3 of the NVRA, 42 U.S.C. § 1973gg-3(a)(1), which provides that each State motor vehicle driver's license application (including any renewal application) shall serve as an application for voter registration. Instead, the Seventh Circuit cavalierly dismisses Petitioner's reading of the statute's plain language without articulating why the voter registration form, which is filled out simultaneously and on the same sheet of paper with the motor vehicle driver's license application are not one and the same, and the court of appeals does so without providing a "plain meaning" approach of ascertaining legislative intent. The rules of statutory interpretation, however, do not allow interpretation by fiat.

The cardinal rule of statutory interpretation provides that courts "must first look to the language of the statute and assume that its plain meaning accurately expresses the legislative purpose." *United States v. Miscellaneous Firearms, Explosives, Destructive Devices and Ammunition*, 376 F.3d 709,

712 (7th Cir. 2004). In determining whether the meaning of statutory language is plain or ambiguous, courts look to the specific language at issue, the context in which the language is used, and the broader context of the statute as a whole. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Courts should interpret statutes "in accordance with [their] ordinary or natural meaning, *Microsoft Corp. v. AT&T Corp.*,550 U.S. 437, 449 (2007)(quotation marks omitted), but because statutes are to be read and interpreted as a whole, the plain and ordinary meaning of a term must be informed by context and the overall statutory scheme. *Reno v. Koray*, 515 U.S. 50, 56 (1995) ("it is a 'fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.'"). Furthermore, courts must not construe a statute in a way that makes words or phrases meaningless, redundant, or superfluous. *Welsh v. Boy Scouts of Am.*, 993 F.2d 1267, 1272 (7th Cir. 1993).

A. Congress Clearly Intended Voter Registration for Federal Elections Filled-Out Simultaneously and On the Same Sheet of Paper with a Motor Vehicle Driver's License Applications to Serve as One and the Same.

The NVRA requires, with regard to federal elections, that states must adopt procedures that allow eligible persons to register to vote by application made "simultaneously" with an application for a motor vehicle driver's license. 42 U.S.C. § 1973gg-2(a)(1). The definition of the adjective "simultaneous" is "happening, existing, or done at the same time." THE

AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1623 (4th ed. 2006). The NVRA further provides that, "Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law **shall serve as** an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application." 42 U.S.C. § 1973gg-3(a)(1). (Emphasis added). The use of the word "shall" generally indicates a mandatory intent unless a convincing argument to the contrary is made. *Sierra Club v. Train*, 557 F.2d 485, 489 (5th Cir. 1977) (*citing*, C. SANDS, SUTHERLAND'S STATUTORY CONSTRUCTION § 25.04 (4th ed. 1973)). The court of appeals in this case has failed to make any explanation to the contrary. Moreover, the definition of the intransitive verb "serve" is "to be of service or use; function" and "to act in a particular capacity." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1591 (4th ed. 2006). A simple substitution of the word "serve" with its definition makes it crystal clear that Congress intended a State motor vehicle driver's license application (including any renewal application) "to be of service or use" or "to function or act" as an application for voter registration. Consequently, the NVRA mandates that a State motor vehicle driver's license application and a voter registration application made at the same time, on the same sheet of paper, and in person at a department of motor vehicle act or function as one and the same.

This notion of one uniform application is further supported by other references in the statute. For instance, the NVRA provides that, "Each State shall include a voter registration application form for

elections for Federal office **as part of** an application for a State motor vehicle driver's license." 42 U.S.C. § 1973gg-3(c)(1). (Emphasis added). The definition of the noun "part" is "a portion, division, piece, or segment of a whole." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1280 (4th ed. 2006). Similarly, the NVRA refers to a voter registration application as a "**portion of** an application for a State motor vehicle driver's license." 42 U.S.C. § 1973gg-3(c)(2). (Emphasis added). The definition of the noun "portion" is "a section or quantity within a larger thing; a part of a whole." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1368 (4th ed. 2006).

Furthermore, the NVRA provides that the voter registration application portion may not require any information that duplicates information required in the driver's license portion of the form, 42 U.S.C. § 1973gg-3(c)(2)(A), indicating that once information is entered in the driver's license application portion of the document it is for all purposes also entered in the voter registration application portion of the document. In other words, it's unnecessary to repeat information already provided in portion "A" because both portion "A" and "B" are sections within a larger thing; *i.e.*, they are a part of a whole record. Consequently, the overall statutory scheme of the NVRA clearly and unambiguously indicates that there is but one complete and uniform driver's license application.

The opinion of the court of appeals ignores Congressional intent that the NVRA is to be read together with the DPPA. Instead, the Seventh Circuit dwells on only the DPPA and makes its own policy preference doing great violence to the statutory

scheme. Namely, without giving plain meaning to the language expressly chosen by Congress in enacting the NVRA, the Seventh Circuit has given the NVRA no effect and the court of appeals thereby reads the DPPA outside of its statutory framework, which can only be read in conjunction with and informed by the NVRA.

B. The Question Presented has a Profound Implication for Privacy Rights and Personal Security.

The Congress enacted the DPPA as part of the Violent Crime Control and Law Enforcement Act. *Margan v. Niles*, 250 F. Supp. 2d 63, 68 (N.D.N.Y. 2003). The DPPA was part of crime fighting legislation enacted in response to the murder of a young woman in Los Angeles, California, in 1989. *Margan*, 250 F. Supp. 2d at 68. Rebecca Schaeffer was an actress who starred on a television show *My Sister Sam* in the late 1980s. *Margan*, 250 F. Supp. 2d at 68. One of Schaeffer's "fans," Robert Bardo, retained a private investigator who recorded Schaeffer's license plate number. *Margan*, 250 F. Supp. 2d at 68. The investigator then went to the California State Department of Motor Vehicles where, for a nominal fee, he was able to obtain Ms. Schaeffer's home address. *Margan*, 250 F. Supp. 2d at 68. With the knowledge of Schaeffer's home address, Bardo went to her home and murdered her. *Margan*, 250 F. Supp. 2d at 68. Following this incident, several members of Congress sought to prevent state motor vehicle departments from freely providing personal information obtained from motor vehicle records. *Margan*, 250 F. Supp. 2d at 68. Through the DPPA, Congress intended to prevent stalkers, harassers, would-be criminals, and other unauthorized

individuals from obtaining and using personal information from motor vehicle records. *Margan*, 250 F. Supp. 2d at 68.

But if the court of appeals decision is left to stand then everyone who fills out a State motor vehicle driver's application and a voter registration application, simultaneously, on the same sheet of paper, and in person at a department of motor vehicle pursuant to the NVRA does not have any protection under the DPPA from having their information released. This is contrary to the intent of Congress in enacting the NVRA and the DPPA. Indeed, Congress wanted people to register to vote while getting a driver's license, all the while, being safe from having their personal information given out to the general public; not to create a disincentive from registering to vote. If the decision of the court of appeals is left to stand then there would be no reason to do both at the same time if one would have less protection by doing both at the same time rather than registering to vote and applying for a driver's license, separately, and in different places.

Further, this Court recently granted *certiorari* in the case of *John Doe # 1, et al., v. Sam Reed, Washington Secretary of State, et al.*, U.S. Sup Ct. Docket No. 09-559, which involves a similar issue as in this case. Namely, *Doe # 1* concerns the public disclosure of personal information of referendum petition signers. As such, if the Court is inclined to recognize or enforce a right to protect the dissemination of a voter's personal information to the public based upon the First Amendment to the U.S. Constitution then surely this Court must grant certiorari in this case to decide the narrow issue of

whether a State motor vehicle driver's application and a voter registration application made simultaneously, on the same sheet of paper, and in person at a department of motor vehicle pursuant to the NVRA pertains to a motor vehicle record under the DPPA.

II. The District Court's Conclusion that Actions against Public Officials are Redundant under the DPPA Disregards the Decision of this Court in *Kentucky v. Graham*, 473 U.S. 159 (1985).

In *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985), this Court stated "that suits against municipal employees and officials in their official capacities are redundant and unnecessary when the municipality is also a named defendant." However, this Court expressly limited its holding, by its own terms, to suits brought under Section 1983, and the holding in *Graham* does not apply to "suits brought under any other provision of federal law." *Graham*, 473 U.S. at 162 n.2. Petitioner's second amended complaint is based on the DPPA, which gives him an express right of action against individuals, and not on Section 1983. Consequently, Petitioner can bring suit against the individual members and director of a public body in their official capacities despite the fact that the public body is also a named defendant.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted

Nicholas C. Kefalos, P.C.
Counsel of Record
Adolfo Mondragón
VERNOR MORAN, LLC
27 North Wacker Drive, Suite 2000
Chicago, Illinois 60606-2800
(312) 264-4460
(312) 264-4461 (fax)